

# **EXHIBIT L**

2011.01.21 Trial Transcript Day 12 1/21/2011 8:22:00 PM

<p style="text-align: right;">2797</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF VIRGINIA 3 RICHMOND DIVISION 4 5 ----- 6 ePLUS, INC. : Civil Action No.  : 3:09CV620 7 vs. :  : 8 LAWSON SOFTWARE, INC. : January 21, 2011  : 9 ----- 10 11 COMPLETE TRANSCRIPT OF THE JURY TRIAL 12 BEFORE THE HONORABLE ROBERT E. PAYNE 13 UNITED STATES DISTRICT JUDGE, AND A JURY 14 15 APPEARANCES: 16 Scott L. Robertson, Esquire 17 Michael G. Strapp, Esquire 18 Jennifer A. Albert, Esquire 19 David M. Young, Esquire 20 Goodwin Procter, LLP 21 901 New York Avenue NW 22 Suite 900 23 Washington, D.C. 20001 24 Craig T. Merritt, Esquire 25 Christian &amp; Barton, LLP 909 East Main Street Suite 1200 Richmond, Virginia 23219-3095 Counsel for the plaintiff  Peppy Peterson, RPR Official Court Reporter United States District Court</p>	<p style="text-align: right;">2799</p> <p>1 P R O C E E D I N G S 2 3 THE CLERK: Civil action number 3:09CV00620, ePlus, 4 Incorporated, versus Lawson Software, Incorporated. Mr. Scott 5 L. Robertson, Mr. Craig T. Merritt, Ms. Jennifer A. Albert, and 6 Mr. Michael G. Strapp represent the plaintiffs. 7 Mr. Daniel W. McDonald, Mr. Dabney J. Carr, IV, Ms. 8 Kirstin L. Stoll-DeBell, Mr. William D. Schultz, and Ms. Rachel 9 Hughey represent the defendant. Are counsel ready to proceed? 10 MR. ROBERTSON: Yes, Your Honor. 11 MR. McDONALD: Yes, Your Honor. 12 THE COURT: All right. We'll take plaintiff's JMOL 13 motion first. 14 MR. ROBERTSON: Good morning, Your Honor. 15 THE COURT: Good morning. 16 MR. ROBERTSON: I'm going to be arguing plaintiff's 17 judgment as a matter of law with respect to infringement, and 18 Ms. Albert will be addressing plaintiff's judgment as a matter 19 of law with respect to the invalidity issues. 20 Your Honor, Rule 50 provides that judgment as a 21 matter of law may be granted when a reasonable jury would not 22 have a legally sufficient evidentiary basis to find for the 23 party Lawson on that issue. ePlus moves for JMOL that Lawson 24 infringes all the asserted claims of the patents-in-suit, both 25 directly and indirectly, both through inducement of</p>
<p style="text-align: right;">2798</p> <p>1 APPEARANCES: (cont'g) 2 Dabney J. Carr, IV, Esquire 3 Troutman Sanders, LLP 4 Troutman Sanders Building 5 1001 Haxall Point 6 Richmond, Virginia 23219 7 Daniel W. McDonald, Esquire 8 Kirstin L. Stoll-DeBell, Esquire 9 William D. Schultz, Esquire 10 Merchant &amp; Gould, PC 11 80 South Eighth Street 12 Suite 3200 13 Minneapolis, Minnesota 55402 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">2800</p> <p>1 infringement and contributory infringement. 2 I'm not going to go through all the asserted claims, 3 Your Honor. I know Your Honor is familiar with them, and that 4 would just take up too much time, and I know we're pressed for 5 time here this morning with the Court's schedule this 6 afternoon, but let me hit a high point, first start off by 7 saying, we contend that the defendants non-infringement case in 8 this proceeding has been really based on misdirection, that 9 they have ignored the Court's claim construction with respect 10 to catalog. They rewrote the provision for published by a 11 vendor to suit their manufactured non-infringement positions. 12 It required the Court, I think midcourse through this 13 case, to issue the instruction with respect to published by a 14 vendor to bring some clarity to what the Court intended when it 15 gave its instruction with respect to what a catalog is. 16 It did not mean, as the defendant contended, that the 17 item data associated with the catalog could not be selected -- 18 or had to be selected by the customer or modified or deleted or 19 reformatted or be an entire catalog. That was never intended 20 by the Court, and its revised published-by-a-vendor 21 construction made that clear, and I think the arguments made on 22 that, the non-infringement arguments that were based on that 23 have no sound footing in the record on this case. 24 We believe that the best evidence in this case has 25 come from, indeed, Lawson's own witnesses and documents. Mr.</p>

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<p style="text-align: right;">2965</p> <p>1 THE COURT: Moving to 26, there is an objection</p> <p>2 there. I thought you all worked out a lot of stuff.</p> <p>3 Substantial progress you made -- who was it that represented</p> <p>4 there was substantial progress going on? You don't have to</p> <p>5 answer that question. You plead guilty?</p> <p>6 MR. MERRITT: I do. I was sent down the hall to</p> <p>7 check. I was assured, and they looked like they were working.</p> <p>8 THE COURT: All right, 26.</p> <p>9</p> <p>10 (Discussion off the record.)</p> <p>11</p> <p>12 THE COURT: Okay, 26.</p> <p>13 MR. ROBERTSON: Let me raise one issue, and then I'll</p> <p>14 let Lawson raise the other issues. The things that are struck</p> <p>15 here about -- I'm sorry, I'm down about --</p> <p>16 THE COURT: Let's go to about the eighth line down,</p> <p>17 acts that constitute.</p> <p>18 MS. STOLL-DeBELL: So, Your Honor, with that, I think</p> <p>19 the Federal Circuit held in DSU Medical Corporation that intent</p> <p>20 for indirect infringement requires an intent to cause the</p> <p>21 actual infringement, not the acts that constitute infringement.</p> <p>22 THE COURT: What is the difference?</p> <p>23 MS. STOLL-DeBELL: You'd have to actually know about</p> <p>24 a patent and intend to cause the infringement as opposed to</p> <p>25 intend to just cause something that you don't know is an</p>	<p style="text-align: right;">2967</p> <p>1 relying on this SEB case, Your Honor, which is an outlier case</p> <p>2 talking about deliberate indifference. The facts of that case</p> <p>3 are very different than what we are talking about here.</p> <p>4 In that case, the defendant actually copied the</p> <p>5 patentee's product. They sent it to their manufacturer, and</p> <p>6 they copied every feature of it. Then they went and had a</p> <p>7 patent infringement -- or an opinion done, and they didn't tell</p> <p>8 the patent attorney that they had copied the patentee's</p> <p>9 product.</p> <p>10 And in that case, the Federal Circuit found that they</p> <p>11 had acted with reckless disregard for the patent rights by</p> <p>12 copying the product and then having a search done and not</p> <p>13 telling their patent attorney that they copied it. In that</p> <p>14 case, the Federal Circuit found that they basically did know</p> <p>15 about the patent in that case because of those bad acts.</p> <p>16 We don't have those facts here, Your Honor, and I</p> <p>17 think this reckless disregard standard is confusing. As Mr.</p> <p>18 Robertson noted, the Supreme Court has granted cert on that</p> <p>19 case, and I just don't think it's good law, and I don't think</p> <p>20 it makes sense to put it in this case.</p> <p>21 MR. ROBERTSON: Your Honor, it is the Federal</p> <p>22 Circuit's most recent pronouncement on this case. They didn't</p> <p>23 announce the standard based on the facts. They announced the</p> <p>24 standard can be reckless disregard, and I did raise this with</p> <p>25 Your Honor before. A case that's on certiori is still the law</p>
<p style="text-align: right;">2966</p> <p>1 infringement.</p> <p>2 So I just took out the acts that constitute, because</p> <p>3 that is the holding of the DSU Medical Corp. It was actually</p> <p>4 an en banc decision from the Federal Circuit to resolve a</p> <p>5 conflict in their law, and they held exactly that, that the</p> <p>6 intent is to cause --</p> <p>7 THE COURT: That's what the next clause says. It</p> <p>8 says -- you are not reading the whole thing. You are just</p> <p>9 editing out something. Cause the acts that constitute direct</p> <p>10 infringement, comma, that Lawson knew of the patent and Lawson</p> <p>11 knew or should have known that its actions would lead to actual</p> <p>12 infringement. I mean, that seems to me to do --</p> <p>13 MS. STOLL-DeBELL: I'll withdraw that redline.</p> <p>14 THE COURT: Okay.</p> <p>15 MS. STOLL-DeBELL: I'll put my horse back in the</p> <p>16 barn, Your Honor.</p> <p>17 THE COURT: That's a good thing to do. A good</p> <p>18 horsewoman knows when to stable a mount.</p> <p>19 All right, now, do you want to add the underscored</p> <p>20 part here in your suggestion, Ms. Stoll-DeBell?</p> <p>21 MS. STOLL-DeBELL: Yes, sir.</p> <p>22 MR. ROBERTSON: I mean this appears argumentative to</p> <p>23 me, Your Honor, and I don't know. Is there a case that says</p> <p>24 this that you want to rely on?</p> <p>25 MS. STOLL-DeBELL: I think to start off, they are</p>	<p style="text-align: right;">2968</p> <p>1 of the land until and -- if and until the Supreme Court</p> <p>2 overturns it.</p> <p>3 MS. STOLL-DeBELL: It is one case, Your Honor,</p> <p>4 talking about --</p> <p>5 THE COURT: Excuse me. Reckless disregard has always</p> <p>6 been -- as far as I know, the concept of willful blindness,</p> <p>7 deliberate indifference, all of those meld together and are</p> <p>8 components that typically, in the law of intent, have been</p> <p>9 considered -- have been appropriately considered as factors in</p> <p>10 the analysis.</p> <p>11 MS. STOLL-DeBELL: Your Honor, that may be true, but</p> <p>12 it doesn't fit the facts of this case. We don't have any</p> <p>13 copying here. In fact, as you know, Lawson has been selling</p> <p>14 these products since the 1980s. There's just no facts that are</p> <p>15 even anywhere close to the facts that they looked at in the SEB</p> <p>16 case that would support instructing the jury on reckless</p> <p>17 disregard here.</p> <p>18 THE COURT: This case says, this Court has made</p> <p>19 clear, however, that inducement requires a showing of specific</p> <p>20 intent to encourage another's infringement. As other Courts</p> <p>21 have observed, specific intent in the civil context is not so</p> <p>22 narrow as to allow an accused wrongdoer to actively disregard a</p> <p>23 known risk that an element of the offense exists.</p> <p>24 And isn't that -- this Court notes that the Supreme</p> <p>25 Court has indicated, in a different civil context, that</p>

1 arguments, Your Honor?

2 THE COURT: We told the jury to come back at 9:00.

3 So you're going to get those instructions over here by -- I

4 need them by four o'clock tomorrow afternoon. So if that lets

5 you sleep a little later, have at it. Does that take care of

6 everything? I don't intend to clean up night.

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8 (Court adjourned.)

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